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Charleston Gazette

EPA, CDC sending new team to Charleston

By Ken Ward Jr.

CHARLESTON, W.Va. -- The Obama administration is sending a multi-agency team to West Virginia this week as public concerns mount about the state's handling of last month's chemical leak that contaminated drinking water supplies serving 300,000 residents.

Officials from the U.S. Environmental Protection Agency and the Centers for Disease Control and Prevention will be in Charleston on Wednesday at the request of Gov. Earl Ray Tomblin.

The governor asked for additional federal assistance as residents express continued concerns about the safety of their water and about the lack of clear information from state public health officials.

"CDC has a long pattern of going where we're invited to help on health issues," said CDC

spokeswoman Barbara Reynolds. "We've been invited, and we're going."

EPA officials did not immediately comment on the trip.

Both the CDC and the EPA have had staff members in West Virginia for various periods of time since the Jan. 9 leak.

EPA officials have been involved most directly in activities at the site of the Freedom Industries leak, while CDC officials who visited West Virginia were helping with a follow-up study of the more than 500 residents who sought medical treatment. CDC officials also devised the controversial 1-part-per-million "screening level" the state has used in telling residents that their drinking water is safe.

Both federal agencies have at times dodged questions from the media, and neither has appeared publicly to answer questions about the leak, its aftermath or the potential health effects.

On Tuesday, the EPA and the CDC both began making staff available for brief interviews.

In recent days, state officials have tried to focus attention on the federal agencies, though clear information from various state agencies has also been difficult for the media and the public to obtain.

Details of the visit have yet to be fully disclosed, but the CDC indicated that in addition to meeting with state officials there has been discussion of some sort of public or media event.

Amy Goodwin, communications director for Tomblin, said the federal agencies would join state officials to "provide an update -- in detail -- on what we have accomplished, where we stand now, and what actions we are taking as we move forward." Goodwin said that update would take place during an afternoon news conference.

Also unclear, though, is whether the new EPA/CDC visit will push state officials to do what they've so far been unwilling to do: begin testing of at least some sort of sample of home plumbing systems to determine if MCHM remains inside pipes and water tanks.

During a U.S. Senate committee hearing Tuesday, Natural Resources Defense Council senior official Erik Olson noted that testing so far has been done only at the water treatment plant, some public locations such as schools and at fire hydrants.

Olson noted that University of South Alabama researcher Andrew Whelton has encouraged state officials also to test inside homes.

"Even if homeowners have now flushed the water in their homes as recommended, some worry that the chemicals may have penetrated into their plastic water piping during the days that the water was stagnant, and that chemicals may continue to be released into the water for some time," Olson told lawmakers.

Olson noted that Whelton's team recently received a grant from the National Science Foundation to work on the issue, but that the grant provides "insufficient resources to conduct an extensive testing regime that would be representative of the 300,000 customers affected."

Charleston Gazette

Leak blame abounds, Congress told

By Ken Ward Jr.

CHARLESTON, W.Va. --Problems with a variety of federal programs -- from drinking-water laws to emergency-response planning to toxic-chemical regulations -- contributed to the Jan. 9 Elk River chemical leak, lawmakers in Washington were told Tuesday.

Separate congressional committees heard testimony about threats to public drinking-water supplies and about longstanding weaknesses in the federal law that governs toxic-chemical safety.

"The West Virginia incident highlights the many holes we have in current federal environmental laws," said Erik Olson, senior director for health and food at the Natural Resources Defense Council.

Olson was among those who testified before an Environment and Public Works subcommittee, where legislation is being considered to toughen chemical storage-tank rules and rewrite the troubled Toxic Substances Control Act, or TSCA.

In his testimony, he praised the chemical tank bill proposed by committee Chairwoman Barbara Boxer, D-Calif., and Sens. Jay Rockefeller and Joe Manchin, both D-W.Va.

However, Olson joined Boxer in expressing concern about the TSCA reform legislation that Manchin has been trying to work out with Senate Republicans and which Manchin lauds as a compromise.

Also in the Senate, West Virginia political leaders turned out in force to testify about the chemical leak.

Sen. Jay Rockefeller, D-W.Va., for example, made it clear that he believes one of the problems that led to the Freedom Industries leak is a long-time lack of tough environmental enforcement by the state.

"Industry does it all the time and gets away with it," Rockefeller said. "They will cut corners and they will get away with it. Regulation is soft in West Virginia. It's always been soft."

Manchin, speaking in an interview after appearing before the committee, said the chemical leak hasn't made him rethink his harsh criticism of the Obama administration's policies on coal-mining issues. Manchin said some people misunderstood his comments to The New York Times, in which he said West Virginia has always done the nation's "heavy lifting" by mining coal and making chemicals.

"We've always done the hard work," Manchin said. "But that's not an excuse for saying you have to throw caution to the wind on the environment or on safety."

"The bottom line is, 'Why do we have to have these disasters and tragedies?' I can't answer that for you," Manchin said. "It's a shame."

Reps. Shelley Moore Capito, R-W.Va., and Nick Rahall, D-W.Va., and West Virginia Secretary of State Natalie Tennant also testified at Tuesday's hearing.

In a House subcommittee hearing, NRDC senior scientist Jennifer Sass agreed that the West Virginia leak highlighted the need to re-examine and carefully reform the nation's toxic-chemical laws.

"It was surprising to many people -- and wholly unacceptable -- that thousands of gallons of a hazardous chemical could be stored and spill upstream of a drinking-water intake -- and that there was essentially no useful information available for the public, drinking-water system operators, state or federal public-health officials or medical professionals and first responders, as to the safety or potential health and environmental effects of the substance," Sass told a House Energy and Commerce subcommittee.

Sass said, though, that the situation is even worse.

"We are routinely exposed to hundreds, even thousands, of chemicals in our daily lives -- even before we are born -- in an infinite number of combinations and mixtures -- and for most chemicals, we do not have the information necessary to know whether or not those chemicals are safe," Sass said.

In Senate testimony, West Virginia Department of Environmental Protection Secretary Randy Huffman said his agency has identified 600 facilities housing 3,500 above-ground chemical-storage tanks. As many as 100 of those facilities -- including perhaps 1,000 tanks -- "may exist within an area that could impact a public drinking-water source," Huffman said.

"Many of these tanks contain petroleum or other materials that may be regulated under different programs, in which case, they would not pose the risk that the Freedom Industries site and others like it pose," Huffman said, "but these numbers clearly raise concerns that this incident could be repeated in other areas of the state."

Charleston Gazette

Chem spill economic impact is \$61 million, study says

By Staff reports

Charleston, W.Va. -- The economic impact of the Jan. 9 chemical spill that contaminated the water supply for 300,000 people is \$61 million, according to a preliminary study.

The Marshall University Center for Business and Economic Research conducted a preliminary investigation, which looked at establishments such as schools, medical offices, restaurants, hotels and some retail stores that needed clean water to provide service.

The CBER estimates the initial impact to be slightly more than \$19 million for each business day during the "Do Not Use" water order issued for nine counties.

"This amounts to 24 percent of the economic activity of the affected area," a press release states.

In the four days following the ban, CBER estimates the total impact around \$61 million, including two business days and two weekend days.

The study estimates the number of affected workers to be nearly 75,000 for each business day the ban was in place, representing about 41 percent of area workers.

Some were hit harder than others, the study shows.

"This high share is an indicator of the nature of the impacts, where the lower-wage, service-producing sector was more acutely impacted than higher-wage industries," the release states. "Establishments in the restaurant and lodging industries are less likely to recover lost revenues and are among those most affected by the inability to use water."

The study suggests state and local government and industries such as mining and construction to be unaffected.

The estimated impact does not include clean-up costs of the spill or emergency expenditures made as a result and thus does not represent the full economic impact, the release states.

A portion of the impact is permanently lost revenue and employee income that will not be recovered. Further analysis is needed to uncover the full effect, the release states.

Last week, the Charleston Convention and Visitors Bureau told The Charleston Gazette financial losses from only 12 businesses are totaling \$1 million.

Chesapeake Bay Journal

21 states, 8 counties join Farm Bureau challenge to Bay TMDL

By Karl Blankenship on February 05, 2014

Arguing that the Chesapeake Bay cleanup plan “strips states of their traditional rights to make land use decisions,” the attorneys general of 21 states on Monday joined farm groups seeking to reverse a federal judge’s decision last year upholding the plan.

Their friend-of-the-court brief supports the appeal by the American Farm Bureau, the National Association of Homebuilders and several agricultural trade groups who are seeking to overturn Federal District Judge Sylvia Rambo’s ruling last September that the EPA acted within its authority to establish the Chesapeake Bay Total Maximum Daily Load, or pollution diet, in December 2010.

Only one of the states signing onto the brief, West Virginia, represented a portion of the Bay watershed. But eight counties from the Bay watershed filed a separate brief supporting the appeal.

Both the states and counties argued that the EPA exceeded its Clean Water Act authority in the Bay TMDL because it not only set limits on the amount of nitrogen, phosphorus and sediment that can enter the Chesapeake, but also set limits on the amounts of those pollutants that can enter from each major river basin and state. It further limited the amount that could come from major pollution sectors, such as wastewater treatment plants, agriculture, stormwater and septic.

The briefs argue that while the EPA might be able to set pollution limits for the Bay as a whole, the more detailed allocations in the TMDL have the practical effect of dictating local land use decisions, which the Clean Water Act leaves in the hands of state and local governments.

The attorneys general said that the EPA used the Bay TMDL “to micromanage sources of pollution that by tradition — and by statute — have been beyond EPA’s reach.”

Kansas Attorney General Derek Schmidt, who filed the brief, said in a statement that “we would prefer to get that answer while the question surrounds land use in the Chesapeake Bay instead of waiting for EPA to do the same thing along the Mississippi River basin.”

Most, though not all, of the states joining in the brief were in the Mississippi River drainage,

where agricultural groups are worried that similar efforts may be made to force nutrient reductions from Midwest farms. The Mississippi is the major source of pollution to the northern Gulf of Mexico, which is also on the EPA's list of impaired waters.

"Congress deliberately structured the Clean Water Act to involve states in the decision-making process when nonpoint source runoff is being regulated," Schmidt said. "That's because runoff regulation inevitably implicates land use decisions and private property rights, and Congress did not intend to centralize those decisions in Washington, DC."

In her 99-page ruling last October, Rambo said that EPA had not exceeded its authority, and noted that the Bay TMDL had been developed with the participation of all states in the watershed over a period of years. She called its development process an example of "cooperative federalism" and said it was "misleading" to suggest the allocations were set independently by the EPA. Rather, she said, they were largely developed by the states with considerable "back and forth" with the EPA.

The attorneys general argued that regardless of state participation in the process, the EPA lacked authority under the Clean Water Act to make such detailed allocations "and no acquiescence by any state can give it the authority it lacks."

Although a number of trade groups had joined the American Farm Bureau Federation in its original challenge to the TMDL, Monday's filings in support of the appeal was the first time that states and counties had joined in the case.

EPA officials had no comment as they had not had a chance to review the briefs.

Will Baker, president of the Chesapeake Bay Foundation — one of several groups that have intervened on EPA's side in the case — criticized the states for using concerns about the other watersheds to try to block Bay cleanup plans.

"We say to Missouri, Indiana, Kansas, Alaska, and the other 17 states, don't tell us how to restore clean water in our back yard," Baker said. "Each of the six Bay states and the District of Columbia — including hard-working farmers, businesses, and individuals — are cooperating. Together, we are well on our way to making our rivers and streams safer, improving habitat, protecting human health, and strengthening local economies. Those are good things, at least here."

The attorneys general from Kansas, Indiana, Missouri, Alabama, Alaska, Arkansas, Florida, Georgia, Kentucky, Louisiana, Michigan, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming joined in support of the reversal. Most were Republicans, although three — those from Missouri, Kentucky and Arkansas — were Democrats.

The counties joining in a brief were Cambria, Clearfield, Lancaster, Tioga and Perry counties in Pennsylvania; Hardy and Pendleton counties in West Virginia; and New Castle county in Delaware.

The case is pending before the 3rd U.S. Circuit Court of Appeals in Philadelphia.

Lancaster Newspapers

Lancaster County joins fight against EPA in setting pollution limits for farmers

By AD CRABLE | Staff Writer

Lancaster County has joined the effort to fight the federal government over dictating what farmers must do to clean up the Chesapeake Bay.

Lancaster, along with Tioga, Perry, Cambria and Clearfield counties, were included in “friends of the court” filings Monday as the American Farm Bureau Federation and others filed a court appeal in the U.S. Circuit Court of Appeals in Philadelphia.

The AFBF, Pennsylvania Farm Bureau and other agriculture and home-building groups seek to overturn a federal district court ruling in September.

There, Judge Sylvia Rambo found that the U.S. Environmental Protection Agency does indeed have the right to impose pollution limits on farmers, as well as state and local governments to clean up the Bay under the federal Clean Water Act.

Farming, fertilizer and homebuilding groups had sued EPA, saying the agency had made a “power grab” and illegally taken control away from the state in setting land-use policies.

They also claimed that EPA is not giving Pennsylvania farmers credit for conservation measures they have made in setting stricter controls on farm practices.

Now, those groups have appealed the September ruling.

After staying out of the original lawsuit, Lancaster County is now part of the lawsuit appeal, not as an intervening party but as a “friend of the court.”

Commissioners Dennis Stuckey and Scott Martin last week made an “administrative decision” to take that action. The matter was not part of a public commissioners meeting.

Commissioner Craig Lehman refused to sign a letter of support to the Pennsylvania Farm Bureau.

“Please accept this letter of our support for the “Friend of Court” brief by counties affected by the Chesapeake Bay Total Maximum Daily Load (TMDL),” states the letter signed by Stuckey

and Martin.

“The brief will discuss the nature of the impacts which not only affect farmers, but also all land uses within a county regarding land use changing the use and character of land.”

Stuckey on Monday said he was approached about aiding the lawsuit appeal by the Pennsylvania Farm Bureau at the Pennsylvania Farm Show.

“We agreed with the appeal in that the EPA has overstepped its bounds and its statutory authority to dictate on the local level what the TMDL loads will be,” he said.

Local municipalities along with the Pennsylvania Department of Environmental Protection should make those decisions “as opposed to the EPA micromanaging the whole effort,” Stuckey said.

Stuckey stressed that he was not opposed to efforts to clean up the Chesapeake Bay, rather “it’s the overreaching of the EPA,” he said.

Another factor, he said, was his belief that the conservation practices of local farmers to reduce nutrient pollution and soil runoff are not being taken into consideration enough.

“We’re not getting enough credit,” he said.

Stuckey said he consulted Don McNutt, administrator of the Lancaster County Conservation District, who was supportive of the move.

Stuckey said aiding the legal effort will not cost taxpayers. He said the commissioners turned down a request for money to help pay for the court fight.

Commissioner Martin said farmers have been making big strides with best-management practices for years before EPA began issuing mandates.

“I’m bothered about EPA going after various segments. The locals know how best to do this,” he said.

McNutt said he supports the court challenge of EPA primarily because the computer models that EPA uses to determine what will be required of Pennsylvania agriculture woefully underestimates the amount of conservation measures farmers already have done.

“Here in Lancaster County, for every one best-management practice paid for by the state or the feds, there are about five more that have been done on the farmer’s own nickel,” McNutt said.

These voluntary conservation measures are not considered in pollution limits because the computer model only counts measures made with state or federal aid, McNutt contended.

“So, in our minds, it’s a little premature to have restrictive regulations based on a model that is

not fully developed yet.

“That’s the overstep the Farm Bureau has challenged.”

Commissioner Lehman said he did not go along with Lancaster County aiding the court case against EPA because he thinks the court decision in September that ruled in favor of EPA “is on solid legal ground and the probability of success is extremely low.”

Lehman commended farmers for “stepping up” to improve water quality against tremendous federal pressure and he said he believes their efforts will show up in revised computer models.

But he said if the court challenge is successful, “haven’t you really said to those farmers that what they did didn’t matter?”

“I don’t want to do anything that undermines the work of farmers here in Lancaster County,” he said.

In addition to the five Pennsylvania counties that filed their support for the American Farm Bureau Federation case, there were two counties from West Virginia and one from Delaware.

Also, the attorneys general from 21 states in the Mississippi River Basin became friends of the court.

Danville Register and Bee

Broken pipe spills coal ash in Dan River

Danville officials do not foresee any issues with city’s drinking water

A stormwater pipe broke Sunday afternoon at the closed Dan Steam Station in Eden, N.C., releasing coal ash basin water and coal ash into the Dan River.

A news release from Duke Energy, owner of the station, stated the dam holding back the water in the ash basin is solid, though there is some erosion farthest from the river.

Freestanding water drained from the primary ash basin into the stormwater pipe. Duke Energy has a team working to eliminate the discharge from the pipe.

Danville emergency management staff has been monitoring the situation and have been in consultation with Duke Energy, the Virginia Department of Emergency Management and the Virginia Department of Environmental Quality about the situation.

Barry Dunkley, director of water and wastewater treatment for Danville Utilities, said he was notified about the spill Sunday and was prepared for any problems.

“All water leaving our treatment facility has met public health standards,” Dunkley said in a news release. “We do not anticipate any problems going forward in treating the water we draw from the Dan River.”

An estimate of the volume of water and ash that reached the river is being worked on and Duke Energy has a water quality monitoring team gathering data in the river, and the North Carolina Department of Environment and Natural Resources is performing a site inspection.

“We’ve been focused on stopping the release of the ash,” Meghan Musgrave, spokesperson for Duke Energy, said. “We will share more details as they become available.”

Duke Energy said local emergency managers were notified as a precaution, but that of about 5 p.m. Monday, downstream municipal water supplies had not been affected.

The Dan River Steam Station went online in 1949 and was closed in 2012, when it was replaced by a new natural gas facility.

Duke Energy said it had been conducting studies for the best way to close the ash basin at the site and other retired plant sites prior to the pipe break on Sunday.

Environmental groups, some of which have sued Duke Energy over 14 coal ash dump sites in North Carolina, sharply criticized the utility for waiting for a day before reporting the spill to the public and not immediately releasing information such as results of water quality tests on the river.

“State environmental officials failed to immediately notify the public about a major toxic spill in one of our precious waterways. Coal ash is extremely dangerous and the communities near the spill deserve information about their health and safety,” Stephanie Schweickert, affiliate organizer with the North Carolina Conservation Network, said in a statement.

Coal ash is the waste left after burning coal. It contains arsenic, mercury, lead, and over a dozen other heavy metals, many of them toxic.

State Impact Pennsylvania

Corbett budget proposal expands drilling in state parks and forests

February 4, 2014 | 12:59 PM

By Marie Cusick

Governor Corbett is seeking to overturn a Rendell-era executive order that placed a moratorium on new gas leases in state parks and forests.

Today Corbett unveiled his \$29.4 billion spending plan for the coming fiscal year. He says allowing new oil and gas leases could immediately generate \$75 million in new revenue to the state, with substantial additional royalty revenue in the future.

Corbett did not directly mention the issue in his budget address to the legislature, but he touted the benefits the Marcellus Shale has brought to the state, noting that Pennsylvania is on track to become the second-largest producer of natural gas in the nation.

“Shale gas offers our country a chance at energy independence and greater economic security – and it’s part of the all-of-the-above strategy we’ve put in place,” Corbett said.

Non-impact drilling

Budget Secretary Charles Zogby called the proposal a restrictive approach to drilling. He says gas companies would not be allowed to construct new well pads. Instead, they could lease new underground mineral rights near existing drilling sites or through adjacent properties.

“We’re looking at an approach that makes no surface disturbance to the land,” says Zogby. “These are pads that are already out there. From a public standpoint they’re not going to see any activity that they otherwise might not.”

In a budget brief put out by Corbett’s office, the proposal called for allowing “non-impact drilling,” which was defined as, “limited drilling activity on commonwealth-owned land, where drilling can occur without the need for additional surface impacts.”

Zogby declined to answer a question about whether transporting approximately 4 million gallons of water per well to a site constitutes a surface impact. It’s not clear whether the measure will allow for new permits for gas-related infrastructure, like pipelines or compressor stations.

When asked by StateImpact Pennsylvania if this budget proposal will effectively overturn the Rendell-era moratorium on new leasing, Zogby said Corbett is planning on issuing his own order.

“I think you’ll see a new executive order issued at some point in the future by the governor,” he said.

Mixed reaction

Legislators were cautious in their responses to the proposal.

“I am obviously sensitive to the concern people have about drilling in the state forest and I’d like to see the details of his plan before I come to a final judgement,” said Senate Majority Leader

Dominic Pileggi (R- Delaware).

Senator Gene Yaw (R- Bradford) chairs the senate Environmental Resources and Energy Committee. He said he hadn't heard much about Corbett's plan.

"If it's non-impact, it's something to look into," he said. "But as far as I know, the moratorium placed in effect by Governor Rendell is still in effect."

Senator John Yudichak (D- Carbon) the minority chair of the committee. He says he's concerned about the idea, calling it a budget gimmick.

"Anytime you hear 'non-impact drilling' that certainly raises eyebrows and raises concerns," he says.

The Marcellus Shale Coalition, a gas industry trade group, praised the budget proposal.

"This common sense, pro-growth budget reflects the clear fact that safe, tightly-regulated shale development — which occurs overwhelmingly on private land as well as on taxpayer-owned land — is a powerful economic engine," said MSC spokesman Steve Forde in an email.

Meanwhile environmental groups condemned the idea of leasing more land.

"This will place more and more of the budget burden on the backs of public lands," said PennFuture president Cindy Dunn in statement. "The governor reveals the short-sighted nature of his stewardship of our natural resources by trading more long-term harm to our state parks and forests in return for short-term economic gain."

New York Times

EPA Staff Struggling to Create Pollution Rule

By CORAL DAVENPORT

FEB. 4, 2014

WASHINGTON — In marathon meetings and tense all-day drafting sessions, dozens of lawyers, economists and engineers at the Environmental Protection Agency are struggling to create what is certain to be a divisive but potentially historic centerpiece of President Obama's climate change legacy.

If the authors succeed in writing a lawsuit-proof regulation that is effective in cutting carbon emissions from America's 1,500 power plants — the largest source of the nation's greenhouse

gas pollution — the result could be the most significant action taken by the United States to curb climate change.

But if the language in the regulation is too loose, there could be little environmental impact. And if it is too stringent, it could lead to the shutdown of coal plants before there is enough alternative power to replace them and, ultimately, to soaring electric bills, power blackouts and years of legal battles.

“Failure is not an option,” said S. William Becker, executive director of the National Association of Clean Air Agencies, whose members are state and local officials.

In his State of the Union address, Mr. Obama declared his intent to use his authority under the Clean Air Act and a 2007 Supreme Court decision to issue new regulations to curb carbon pollution. He is pressing forward as quickly as possible.

Mr. Obama has ordered the E.P.A. to issue by June 1 the draft of a regulation that will set a national standard for carbon pollution. Early indications are that the regulation will direct states to create and carry out their own plans for meeting the standard.

In addition, the agency is looking closely at a proposal by the Natural Resources Defense Council, a nonprofit group, that could well be the heart of the regulation: states could comply with the rule not just by cleaning or shutting down coal plants, but also by making far broader changes across the electricity system — reducing demand, investing in “smart grid” technology or supporting more renewable sources of energy.

Depending on how the rule is written, states could also comply by enacting “cap and trade” programs, which would cap carbon pollution and create a market for buying and selling pollution permits.

The regulation would primarily affect the 600 power plants in the United States that are fired by coal, and could ultimately shutter hundreds of them, depending on how it is written.

In anticipation, coal-heavy states are extensively lobbying the environmental agency. John Lyons, Kentucky’s assistant secretary for climate change, said the Natural Resources Defense Council proposal “would shut down our coal-fired generation at a certain point, and that’s just unacceptable.”

Overall, coal supplies about 40 percent of the nation’s electricity, but states like Kentucky, Ohio and Missouri rely on coal for 80 percent to 90 percent of their power.

Mr. Lyons’s reaction underscores a central risk of the regulation: Handing so much choice to the states sets up the likelihood that Republican governors opposing climate policy will fight the federal requirement, either by suing the E.P.A. or by refusing to create plans to carry it out.

E.P.A. officials have also been warily watching the troubled rollout of the Affordable Care Act

and the 36 governors who balked at setting up state health care exchanges. People close to the climate regulation process say they view the health care rollout as an object lesson in how they need to ease the public reception of what they hope will be a legally bulletproof regulation. The task of writing that language falls chiefly on the shoulders of Joseph Goffman, the agency's senior counsel in the office of clean air and a 30-year veteran of Clean Air Act legal battles.

The E.P.A. administrator, Gina McCarthy, is in the meantime traveling across the country to meet with governors, coal industry leaders, energy companies and environmentalists to try to smooth the way politically for the rule. Ms. McCarthy, who once worked for Mitt Romney when he was governor of Massachusetts, is known for her ability to get along with Republican governors as well as for her environmental policy expertise.

Top agency officials, including Ms. McCarthy, have also held public listening sessions in 11 cities, and the agency is bolstering the efforts with an online campaign on Twitter, Facebook and Vine, the video-sharing website.

In Washington, Mr. Goffman and his team have held more than 200 meetings with state officials, environmentalists and utilities like the Ohio-based [American Electric Power](#), which owns the nation's largest fleet of coal-fired plants. John McManus, the power company's vice president for environmental services, said of the climate regulation, "This could change the whole system of electricity — generation, transmission, distribution."

However, Mr. McManus said, the E.P.A. is soliciting comments from all sides. "It's a larger outreach than I've seen before, and it's appropriate," he said.

The public relations campaign is also aimed at building support for a draft regulation released last September that would limit carbon pollution from future power plants. The rule on existing plants to be released in June will be far more consequential.

Administration officials argue that the urgency of global warming requires rapid and ambitious action and point to a large number of scientific reports concluding that as carbon emissions increase, the coming decades will bring rising sea levels, melting land ice, an increase in the most damaging types of hurricanes, drought in some places and deluges in others — and perhaps even difficulty in producing enough food.

In a 2009 United Nations accord, Mr. Obama pledged that the United States would cut its emissions from 2005 levels 17 percent by 2020 and 83 percent by 2050. Climate policy experts say the new rules will be essential to meeting the 2020 goal, although further action will be required to reach the 2050 goal.

People working on the regulation say that White House officials regularly remind them of its urgency. One person even described White House "nagging" — a notable reversal for an administration that slowed down controversial environmental regulations during the 2012 presidential campaign.

Writing the new rule is legally complicated. Although the environmental agency has the authority to issue the regulation, Mr. Goffman and his lawyers will have to employ a rarely used portion of the Clean Air Act that was not specifically written to address climate change.

They could devise a legally cautious rule that has little environmental impact, or they could write an aggressive regulation that would slash emissions but be legally vulnerable.

“The legal interpretation is challenging,” said an E.P.A. official who spoke on the condition of anonymity. “This effectively hasn’t been done.”

The agency’s task is further complicated by Mr. Obama’s tight timeline, intended to complete as much of the regulatory process as possible by the end of his term in early 2017. After the release of the draft in June, the president wants a final version by June 2015. By June 2016, states must submit plans for carrying it out — a challenge for state environmental agencies, which typically have two to three years to write major new regulations.

“It will be a heavy lift,” said Scott Nally, who last month stepped down as Ohio’s top environmental official. In December, Mr. Nally met with environmental agency officials in Washington for a five-and-a-half-hour session aimed at hashing out details of the rule — particularly how states could meet the schedule.

“We rolled up our sleeves,” Mr. Nally said. “We started with coffee and finished with coffee.”

The timeline is also delicate politically. The draft regulation will come out just months before the 2014 midterm elections, when Republican campaigns plan to reignite charges that Democrats are waging a “war on coal.”

Already, the Senate Republican leader, Mitch McConnell of Kentucky, who faces his own-re-election battle this fall, has said he intends to force a vote on the E.P.A.’s draft climate rule for new coal plants, making vulnerable Democrats cast a difficult election-year vote.

A coalition of industry lobbies and political advocacy groups are also planning to fight the rules. The [American Energy Alliance](#), which receives funding from Koch Industries, the oil refining conglomerate owned by the billionaire brothers Charles and David Koch, plans to attack the proposal in television and radio ads.

“That’s going to be a big fight, when they roll out the rule for existing plants,” said Tom Pyle, president of the group and a former lobbyist for Koch Industries. “We’ll be ready for them.”

Philadelphia Inquirer

Ice, cracked limbs mean 482k without power

By Emily Babay and Frank Kummer, *PHILLY.COM*

Last updated: Wednesday, February 5, 2014, 10:32 AM

More than 500,000 Philadelphia-area residents are without power this morning, as freezing rain and flooding caused tree limbs to crack, snap or topple over utility poles - also helping to make the morning commute treacherous.

Emergency crews in Philadelphia, Montgomery, Bucks, Chester and Delaware counties were busy responding to calls most of the morning, with some hampered by slick roads, downed trees and live lines that had fallen to the ground. Utility crews restored power to some areas as others were going dark.

Bucks County dispatchers said they were too swamped with calls to verify police radio reports of a tree that had fallen into a home in Warminster with possible injuries.

Conditions varied widely with temperatures hovering near freezing -- a few degrees on either side -- appears to have made a difference. Suburbs north and west of Philadelphia faced slick conditions and widespread power outages, while South Jersey, although covered in plenty of ice, was warm enough that roads were mostly wet.

"Far north, far west, that's where you're having the biggest problems from the icing," Jeffrey Kneuppel, a SEPTA deputy general manager, said at a news briefing.

Those conditions have contributed to massive power outages in the Philadelphia area, particularly in the suburbs. By mid-morning, PECO figures already showed that the storm was among the utility's worst outage incidents ever.

Power

PECO's online outage map was showing that about 545,000 customers were without power in the Philadelphia area as of around 10:30 a.m. Outages were most widespread in Chester County, with more than 172,000 customers lacking power. That was followed by more than 163,000 customers impacted in Montgomery County, 125,000 in Bucks County, 64,000 in Delaware County and 18,000 in Philadelphia.

Outages were fewer in South Jersey. PSE&G was reporting that Burlington County was the hardest hit, with about 10,000 customers there lacking power.

Transportation

Several SEPTA Regional Rail lines halted service this morning: The West Trenton Line is suspended due to a CSX train derailment, the Paoli-Thorndale and Cynwyd lines are suspended

due to Amtrak power issues and the Warminster Line is suspended due to signal problems. Passengers should expect delays of up to 40 minutes on Regional Rail trains system-wide.

Bus routes 120, XH and H have also suspended service. Other routes are being detoured.

New Jersey Transit said rail, bus and light rail tickets would be cross-honored system-wide.

Amtrak suspended Keystone Service between Philadelphia and Harrisburg due to numerous weather-related issues.

Reduced speed limits are in place on the New Jersey Turnpike: 35 mph between exit 8 and the George Washington Bridge and 50 mph between exits 3 and 8.

PennDOT imposed speed restrictions on major highways for much of the morning rush, but normal speed limits were restored around 9 a.m.

Downed trees were causing traffic disruptions and lane closures on major roads, including U.S. Route 30 in Caln Township and Interstate 95 southbound in Middletown Township.

Several dozen flights were canceled or delayed at Philadelphia International Airport, according to FlightAware.com.

As the lingering mounds of snow melt into already saturated ground, flooding was also a possibility in many areas.

Schools

School closures did not appear to be widespread. In those areas hardest hit by the ice some districts did close, such as Cheltenham. Philadelphia schools were already scheduled to be closed for classes with only staff expected to report.

However, the Archdiocese of Philadelphia and many suburban school districts were opening later than usual. For example, Lower Merion Township and Cherry Hill schools were opening two hours late. The archdiocese schools are operating on a one-hour delay.

Some universities are also closing or operating on delayed schedules. Temple University, for instance, is opening at 10 a.m., and Rutgers campuses will open at noon. Villanova and West Chester universities are closed.

Government

Government offices in Bucks, Chester and Montgomery counties are closed today.

Delaware County government facilities are opening two hours late.

Philadelphia city offices are operating normally, though traffic courts are opening two hours late.

Gov. Chris Christie has declared a state of emergency in New Jersey. State offices are closed for nonessential employees.

Other

Some major attractions are also closed or opening late. The Philadelphia Zoo is closed to the public. The Philadelphia Museum of Art is opening at noon and the Constitution Center is opening at 11 a.m.

Forecast

The National Weather Service is calling for a mix of freezing rain and sleet before 1 p.m., with a chance of rain after that and a high of 38. So much of this morning's precipitation should melt. No real snow accumulation is expected.

BNA Daily Environment Report

Elk River Spill Illustrates Need for TSCA Reform, Legislators Say

By Pat Rizzuto

Feb. 4 — Members of a House subcommittee pointed Feb. 4 to the lack of toxicity data and other information on chemicals that recently contaminated drinking water for hundreds of thousands of West Virginia residents as illustrating why the Toxic Substances Control Act needs to be reformed.

West Virginia officials had to scramble after the chemicals leaked into the Elk River and got into the water supply, said Rep. Henry Waxman (D-Calif.), ranking member of the Energy and Commerce Committee.

They could not find meaningful health and safety data, he said. "That disaster illustrates the serious problems of current law."

The Energy and Commerce Subcommittee on Environment and the Economy held a hearing on

Sections 4 and 8 of TSCA. The sections authorize the EPA to mandate, respectively, new testing or submission of existing information.

The hearing was the fifth the subcommittee has held on TSCA during the 113th Congress. It was the last scheduled hearing, a committee aide told Bloomberg BNA.

Committee members plan to use the information gleaned from the hearings to craft a bill that would modernize the core provisions of TSCA for the first time since it was signed into law by President Gerald Ford in 1976.

House, Senate Hearings

The Elk River spill in January provided the backdrop for simultaneous hearings on both sides of Capitol Hill.

While the House subcommittee discussed TSCA, a Senate Environment and Public Works subcommittee held another hearing on the safety and security of drinking water supplies ([see related story](#)).

Sen. Joe Manchin (D-W.Va.) testified before the Senate subcommittee.

Stricter chemical storage standards, more frequent inspections and TSCA reform are needed to reduce the possibility of other communities facing the problems with which residents around Charleston have struggled, Manchin said. He recently shared similar remarks with Bloomberg BNA ([22 DEN A-8, 2/3/14](#)).

Obstacles to Obtaining Data

Jennifer Sass, a senior scientist with the Natural Resources Defense Council, told the House subcommittee the West Virginia spill has made the impact of the information gaps due to TSCA constraints more visible.

“The leaking of 4-methylcyclohexane methanol (MCHM) and other chemicals into the Elk River in West Virginia brought home—literally into people's homes—the disturbing reality that no useful information is available to the public or those who serve them,” Sass testified.

Sass highlighted two TSCA provisions that she said prevent the EPA from obtaining needed data.

“First, EPA must essentially prove that a chemical poses an unreasonable risk to health or the environment before it can require the needed testing that would show a potential risk,” Sass said.

“This is like requiring a doctor to prove that a patient has cancer before being able to order a biopsy. This ‘Catch-22’ construction of the EPA's testing authority has greatly constrained the agency from getting data through testing,” she said.

“Second, to require testing of existing chemicals, EPA must complete a full formal rulemaking. Other programs, including the pesticide program and even TSCA's new chemicals program, instead allow EPA to require testing by issuing an order, a much more streamlined process,” Sass said.

Solutions Offered

Industry officials testifying at the hearing offered some support for Sass's position. Charles Drevna, president of the American Fuel & Petrochemicals Manufacturers, said “it is irrational to require a demonstration of unreasonable risk before requiring test data that would help demonstrate that risk. The finding of unreasonable risk should be deleted in Section 4.”

Beth Bosley, president of Boron Specialties, a small chemical manufacturing company, said a major problem of Section 4 is its requirement that the EPA issue regulations to obtain chemical data. Formal rulemaking frequently takes years.

Revising TSCA to give the agency authority to order data submissions would help solve this problem, said Bosley, who testified on behalf of the Society of Chemical Manufacturers & Affiliates.

Congress should not authorize blanket authority, however, for the EPA to require absolutely any data on any chemical, Bosley said.

Rather, legislators should direct the agency to use a stepwise approach to obtain specific, targeted data, Bosley said. A tiered strategy means the agency would order preliminary, less expensive and quicker-to-obtain data that might rule out risk before requiring more expensive and time-consuming data production.

A revised TSCA also should include mandates for the EPA to review a minimum number of chemicals in commerce annually or a particular percentage of chemicals, she said.

Subcommittee Chairman John Shimkus (R-Ill.) said the EPA faces another problem when it tries to get data through regulations: judicial challenges.

“We need to push beyond relitigating those cases and focus on what authorities EPA has now or could reasonably use in the future to produce tailored, necessary and high-quality tests data and other information to carry out TSCA,” Shimkus said.

Risk-Based Strategy Feasible?

Drevna said several times that the EPA should be required to use a tiered, targeted and risk-based strategy to require manufacturers to provide chemical toxicity data or other information.

Waxman asked whether the EPA has sufficient information to use a risk-based strategy to obtain additional information it would need to implement a tiered, targeted and risk-based strategy. Both toxicity and exposure data are needed for analysts to determine the risk, or probability, that

a particular chemical or use of a chemical would be harmful.

Sass said “exposure information is very, very expensive and difficult to get.”

That means the agency initially would have to rely on hazard information to make decisions on whether it needs additional data, she said.

Both Sass and Robert Matthews, an attorney with McKenna, Long & Aldridge LLP who testified on behalf of the Consumer Specialty Products Association, said the agency has quite a bit of hazard data it can use.

Sass, however, voiced concerns that legislation introduced in the Senate, S. 1009, could impede efforts to make the agency's task of getting more needed data. Sen. David Vitter (R-La.) and the late Sen. Frank Lautenberg (D-N.J.) introduced S. 1009, the Chemical Safety Improvement Act, in 2013.

“The introduced bill would prevent EPA from requiring testing for a chemical until [the chemical] has already been identified as a high-priority substance,” Sass said. The agency could not require data on a low-priority chemical, she said.

The lack of exposure data probably would greatly reduce the number of chemicals the agency could determine to be high priorities, she said.

“The Chemical Safety Improvement Act (S. 1009), as introduced, will not solve the problems with current TSCA and in some respects will make things worse,” Sass said.

Processors

Speaking for the Consumer Specialty Products Association, which consists of companies that purchase chemicals to make household and institutional products such as cleaners, air fresheners and pesticides, Matthews reinforced the value of exposure data.

The EPA must have information about exposure to chemicals in commerce, he said.

Much of the information on how chemicals are used, and therefore data that can help the agency estimate exposures, is in the hands of downstream processors, Matthews said.

“CSPA supports the position that in order to better inform EPA's understanding of exposure potential during prioritization and subsequent safety assessments of high priority chemicals, a modernized TSCA should expressly allow the agency to collect necessary use-related information from downstream formulators of consumer and commercial products,” he said.

BNA Daily Environment Report

Senate Caucus Prepares Strategy to Defend Obama Climate Change Plan

By Dean Scott

Feb. 4 — The Senate climate change caucus, which was formed in part to defend President Barack Obama's efforts to limit carbon dioxide emissions from power plants, will offer some insights into its strategy next week, Sen. Barbara Boxer (D-Calif.) told Bloomberg BNA Feb. 4.

Formed in January by Boxer and Sen. Sheldon Whitehouse (D-R.I.), the 20-plus member Senate Climate Action Task Force is preparing for attacks on Environmental Protection Agency rules on at least two fronts.

On one front, Senate Minority Leader Mitch McConnell (R-Ky.) plans to use fast-track procedures under the Congressional Review Act to kill the EPA rules, and on a second front, Sen. Joe Manchin (D-W.Va.) has introduced a bill (S. 1905) to curtail the EPA's authority to regulate greenhouse gases ([12 DEN A-10, 1/17/14](#)).

Boxer said the caucus will discuss “a couple of actions” at its next meeting slated for Feb. 6, including a new “action web page” and other tools they will use to rally support for the EPA rules and other climate actions outlined by Obama in June 2013.

“We will have an announcement next week for two actions we are planning,” said Boxer, who chairs the Environment and Public Works Committee.

In his Jan. 28 State of the Union address, Obama called for “more urgency” on climate change and vowed to push ahead with the EPA power plant rules, which he wants finalized by the end of his second term ([20 DEN A-1, 1/30/14](#)).

House Republicans Advance Bill

In the House, Republicans have already moved legislation (H.R. 3826) identical to Manchin's bill to restrict the EPA's authority to issue the power plant emissions rules.

Introduced by Rep. Ed Whitfield (R-Ky.), the bill was approved Jan. 28 by the House Energy

and Commerce Committee (19 DEN A-1, 1/29/14).

Senate Democrats announced formation of the climate change caucus Jan. 14, which they also hope will lay the groundwork for resurrecting broad climate legislation that collapsed in the Senate in 2010.

The caucus joins some of the newest members of the Senate—such as Sens. Chris Murphy (D-Conn.), Ed Markey (D-Mass.), Cory Booker (D-N.J.) and Martin Heinrich (D-N.M.)—with committee leaders such as Boxer and Foreign Relations Committee Chairman Robert Menendez (D-N.J.).
